

INDIANA DEPARTMENT OF STATE REVENUE

Revenue Ruling #2002-04ST

March 12, 2002

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ISSUE

Sales/Use Tax - Application of state sales tax to certain proposed transactions of an Indiana not-for-profit corporation

Authority: IC 6-2.5-4-1; IC 6-2.5-2-1; IC 6-2.5-5-26; IC 6-2.5-8-1

The taxpayer requests the Department to rule whether:

1. The sale of consigned tangible personal property at an annual event by the taxpayer is exempt from the payment and collection of Indiana sales tax.
2. The taxpayer is required to obtain an Indiana retail merchant's certificate in order to sell the consigned tangible personal property at the annual event.
3. Following the completion of the sales of the consigned tangible personal property at the annual event, will the taxpayer's payments to the Consignors for the consigned tangible personal property be exempt from the collection and payment of Indiana sales tax?
4. If the taxpayer's payments to the Consignors of the funds received from the purchases of the consigned tangible personal property sold at the annual event are exempt from the collection and payment of Indiana sales tax, must the taxpayer complete, sign and provide Exemption Certificates to the Consignors?
5. If the acquisition of the consigned tangible personal property from the Consignors is exempt from the collection and payment of Indiana sales tax and the taxpayer is required to provide Exemption Certificates to Consignors, which line on each Exemption Certificate should be marked by the taxpayer?

STATEMENT OF THE FACTS

1. The taxpayer is an Indiana not-for-profit, public benefit corporation with an exempt organization determination letter from the Internal Revenue Service pursuant to Section 501(c) of the Internal Revenue Code. The taxpayer is an organization, which has been granted a gross income tax exemption under IC 6-2.1-3-20. The taxpayer has also registered with the Department and has received a Not-For-Profit Registration Number.

2. The taxpayer proposes to sell tangible personal property at an annual event at a location in Indiana. The taxpayer plans to engage in similar sales of tangible personal property at each subsequent years' annual event.
3. The taxpayer's sales of tangible personal property at the event will be a fund raising activity to raise funds to further its qualified not-for-profit purposes.
4. The taxpayer's sales of tangible personal property at the event will be carried on for a total of not more than twenty-one (21) days. The taxpayer does not contemplate engaging in any other sales of tangible personal property in this or subsequent years.
5. The taxpayer will receive the tangible personal property to be sold at the event on a consignment basis from various for-profit commercial vendors (hereinafter referred to as either "Vendors" or "Consignors").

DISCUSSION & RULINGS

ISSUE #1:

Whether the sale of consigned tangible personal property at an annual event by the taxpayer is exempt from the payment and collection of Indiana sales tax.

IC 6-2.5-4-1 (a) provides: A person is a retail merchant making a retail transaction when he engages in selling at retail. Subsection (b) further provides that a person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he: (1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration.

IC 6-2.5-2-1 (b) provides that the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as an agent for the state.

IC 6-2.5-5-26 provides that sales of tangible personal property are exempt from the state gross retail tax, if: (1) the seller is an organization which is granted a gross income tax exemption under . . . IC 6-2.1-3-20 . . .; (2) the organization makes the sale to make money to carry on the not-for-profit purpose for which it receives its gross income tax exemption; and (3) the organization does not make those sales during more than thirty (30) days in a calendar year.

RULING #1

The Department rules that the sales are retail sales and subject to sales tax. The Vendors are required to collect sales tax pursuant to IC 6-2.5-4-1 and IC 6-2.5-2-1. The taxpayer would qualify for an exemption under IC 6-2.5-5-26 as a not-for-profit organization if the taxpayer were selling the tangible personal property on its own behalf. However, the taxpayer is selling the tangible personal property on consignment for the Vendors, therefore, the taxpayer must collect the sales tax as an agent for the Vendors.

ISSUE #2:

Whether the taxpayer is required to obtain an Indiana retail merchant's certificate in order to sell the consigned tangible personal property at the annual event.

IC 6-2.5-8-1 provides that retail merchants may not make retail transactions in Indiana, unless they have applied for a registered retail merchant's certificate.

In the instant case, pursuant to IC 6-2.5-8-1, the Vendor must acquire the necessary registered retail merchant's certificate, however, the taxpayer is not required to do so.

RULING #2

The Department rules that the taxpayer is not required to obtain an Indiana retail merchant's certificate in order to sell the consigned tangible personal property, but the Vendor must possess a registered retail merchant certificate. Further, the Vendor must remit the retail tax to the Department under their issued registered retail merchant certificate number.

ISSUE #3:

Whether, following the completion of the sales of the consigned tangible personal property at the annual event, the taxpayer's payments to the Consignors for the consigned tangible personal property will be exempt from the collection and payment of Indiana sales tax.

RULING #3

Notwithstanding the two preceding issues and rulings, the Department rules that the taxpayer is exempt from paying an additional sales tax to the Consignors. As stated above, the taxpayer will have collected the tax as an agent for the Consignors and, as such, shall remit the tax to the Consignor to be submitted to the Department under the Consignor's registered retail merchant certificate number.

ISSUE #4:

If the taxpayer's payments to the Consignors of the funds received from the purchases of the consigned tangible personal property sold at the annual event are exempt from the collection and payment of Indiana sales tax, must the taxpayer complete, sign and provide Exemption Certificates to the Consignors?

RULING #4

This issue is not applicable. See Issue #1.

ISSUE #5:

If the acquisition of the consigned tangible personal property from the Consignors is exempt from the collection and payment of Indiana sales tax and the taxpayer is

required to provide Exemption Certificates to Consignors, which line on each Exemption Certificate should be marked by the taxpayer?

RULING #5

This issue is not applicable as the taxpayer is required to collect the tax as an agent for the Consignor. See Issue #1.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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